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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/081,654	02/22/2002	Ramiro Arrez	PERK 104 US	4400
26568	7590	02/11/2004	EXAMINER	
COOK, ALEX, MCFARRON, MANZO, CUMMINGS & MEHLER LTD SUITE 2850 200 WEST ADAMS STREET CHICAGO, IL 60606			KIM, SANG K	
			ART UNIT	PAPER NUMBER
			3654	

DATE MAILED: 02/11/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/081,654

Applicant(s)

ARREZ ET AL.

Examiner

SANG KIM

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8, 10, 12-21, 23 and 25-28 is/are rejected.
- 7) ☒ Claim(s) 9, 11, 22 and 24 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 07 May 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)                      4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_.
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)                      5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 3 1/2.                      6) ☐ Other: .

***Specification***

The specification is objected to because applicant needs to update the status of the application serial no. 09/731946 filed on 12/7/2000 (now U.S. Patent 6503045 B2). Correction is required.

***Claim Objections***

Claims 1-13 are objected to because of the following informalities:

Claim 1, line 13, "a retracted" should be "the retracted".

Appropriate correction is required.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-6, 12-19, 25-28 are rejected under 35 U.S.C. 102(b) as being anticipated by Redding et al, U.S. Patent No. 5024573.

With respect to claims 1-2 and 14-15, Redding et al show a lifter (20) mounted on the underside of a refuse collection hopper of a refuse collection vehicle; a lifter support (22) between a first position below the hopper (figure 2) and a second position spaced from the first position (figure 4); a lifter carriage (32) carried by the lifter support (22) and pivotally movable between a retracted position (figure 2) and an extended position

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(figure 4) for lifting and inverting refuse collection containers (figure 8) to dump the refuse into the collection hopper; a power source (54, 80) operatively connected to the lifter support (22) and lifter carriage (32) to move the lifter support between the first and second positions and the lifter carriage between a retracted and the retracted and extended positions, as shown in Figs. 2, 4, and 8.

It has been held that the recitation that an element is "suitable" for performing a function is not a positive limitation but only requires the ability to so perform. It does not constitute a limitation in any patentable sense.

With respect to claims 3-6, 16-19, and 27-28, Redding et al show a linkage assembly (74,50, 84...etc.) pivotally connected to the lifter carriage (32) and lifter support (22), and the power source being secured to the linkage assembly (74,50, 84...etc.), as shown in figure 4.

With respect to claims 12-13 and 25-26, Redding et al show a slide track (34, 30, 26,...etc.) for attachment to the underside of the collection hopper, the lifter support being slidably movable within the slide track; wherein the lifter carriage includes a relatively movable upper hook 40 and a lower hook 48, the hooks being movable between a first spaced apart position when the lifter carriage is in the retraced position and a second spaced apart position when the carriage is in the extended position, the hooks being spaced apart a greater distance in the second position than in the first position, as shown in figs. 4 and 9, and as described in column 4, lines 20-49.

Claims 1-8, 10, 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Redding, U.S. Patent No. 5466110.

With respect to claims 1-2, Redding shows a lifter (10) comprising a lifter support (40) between a first position below the hopper (figure 1) and a second position spaced from the first position (figure 3); a lifter carriage (70) carried by the lifter support (40) and pivotally movable between a retracted position (figure 1) and an extended position (figure 3) for lifting and inverting refuse collection containers (figure 3) to dump the refuse into the collection hopper; a power source (64) operatively connected to the lifter support (40) and lifter carriage (70) to move the lifter support between the first and second positions and the lifter carriage between a retracted and the retracted and extended positions, as shown in Figs. 1, 2, and 6.

It has been held that the recitation that an element is "suitable" for performing a function is not a positive limitation but only requires the ability to so perform. It does not constitute a limitation in any patentable sense.

With respect to claims 3-6, Redding shows a linkage assembly (100, 84...etc.) pivotally connected to the lifter carriage (70) and lifter support (40), and the power source being secured to the linkage assembly (100, 84...etc.), as shown in figure 6.

With respect to claims 7-8 and 10, Redding shows a first link (100) having a first and second ends, the first end being pivotally mounted to the lifter support (40); a second link (84) having first and second ends, the first end being pivotally mounted to the lifter carriage (70); the second ends of the first and second links being pivotally secured together (i.e. to the lifter), the power source (64, hydraulic motor, well known in

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the art which involves a linear actuator (e.g. piston...etc)) being operatively coupled to the first and second links, as shown in figure 6.

With respect to claim 13, Redding shows the lifter carriage includes a relatively movable upper hook 110 and a lower hook 122, the hooks being movable between a first spaced apart position when the lifter carriage is in the retracted position and a second spaced apart position when the carriage is in the extended position, the hooks being spaced apart a greater distance in the second position than in the first position, as shown in figs. 4-5.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 12, 14-21, 23, 25-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Redding, U.S. Patent No. 5466110.

With respect to claims 12, 14-15, and 25, Redding shows a lifter (10) comprising a lifter support (40) between a first position below the hopper (figure 1) and a second position spaced from the first position (figure 3); a lifter carriage (70) carried by the lifter support (40) and pivotally movable between a retracted position (figure 1) and an extended position (figure 3) for lifting and inverting refuse collection containers (figure 3) to dump the refuse into the collection hopper; a power source (64) operatively

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connected to the lifter support (40) and lifter carriage (70) to move the lifter support between the first and second positions and the lifter carriage between a retracted and the retracted and extended positions, as shown in Figs. 1, 2, and 6.

As advanced above, Redding shows a slide track (76, 70, 40,...etc.) for attachment to the collection hopper, the lifter support being slidably movable within the slide track

Redding discloses the claimed invention except for attaching a slide track underside of the collection hopper. It would have been obvious to one having ordinary skill in the art at the time the invention was made to attach the slide track underside of the collection hopper, since it has been held that rearranging parts of an invention involves only routine skill in the art. In re Japikse, 86 USPQ 70.

With respect to claims 16-19 and 27-28, Redding shows a linkage assembly (100, 84...etc.) pivotally connected to the lifter carriage (70) and lifter support (40), and the power source being secured to the linkage assembly (100, 84...etc.), as shown in figure 6.

With respect to claims 20-21 and 23, Redding shows a first link (100) having a first and second ends, the first end being pivotally mounted to the lifter support (40); a second link (84) having first and second ends, the first end being pivotally mounted to the lifter carriage (70); the second ends of the first and second links being pivotally secured together (i.e. to the lifter), the power source (64, hydraulic motor, well known in the art which involves a linear actuator (e.g. piston...etc)) being operatively coupled to the first and second links, as shown in figure 6.

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With respect to claim 26, Redding shows the lifter carriage includes a relatively movable upper hook 110 and a lower hook 122, the hooks being movable between a first spaced apart position when the lifter carriage is in the retracted position and a second spaced apart position when the carriage is in the extended position, the hooks being spaced apart a greater distance in the second position than in the first position, as shown in figs. 4-5.

### ***Allowable Subject Matter***

Claims 9, 11, 22, and 24 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Redding does not show a lock for retaining the lifter support in the second position, the lock being releasable upon movement of the lifter carriage to the retracted position; and a connecting rod extending between and pivotally connecting the second ends of the links along a common axis, and wherein the actuator is secured to the connecting rod.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The references of record show other examples of retractable lifter for refuse container.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sang Kim whose telephone number is (703) 305-3712. The examiner can normally be reached Monday through Friday from 8:00 A.M. to 5:30 P.M. alternating Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kathy Matecki can be reached on (703) 308-2688. The fax phone numbers are (703) 872-9326 for regular communications and (703) 872-9327 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.

SK

12/21/03



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